

Supreme Court, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1961

No. ~~122~~ 52

UNITED STATES, PETITIONER,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF MICHIGAN**

**PETITION FOR CERTIORARI FILED FEBRUARY 13, 1961
CERTIORARI GRANTED MARCH 27, 1961**

Supreme Court of the United States

OCTOBER TERM, 1960

No. 722

UNITED STATES, PETITIONER,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF MICHIGAN

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[fol. A] [File endorsement omitted]

**IN THE SUPREME COURT OF THE
STATE OF MICHIGAN**

Appeal from the Circuit Court for the County of Oakland,
In Chancery

Honorable William John Beer, Circuit Judge

Circuit Court No. C-29640

Supreme Court No. 48,252

THE UNION CENTRAL LIFE INSURANCE COMPANY, a
Corporation organized and existing under and
by virtue of the laws of the State of Ohio,
PLAINTIFF AND APPELLEE

v.

UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT

**APPENDIX TO THE BRIEF FOR THE UNITED
STATES, APPELLANT—Filed January 19, 1960**

. . . .

[fol. 1] IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND, IN CHANCERY
STATE OF MICHIGAN

No. C-29640

THE UNION CENTRAL LIFE INSURANCE COMPANY, a
Corporation organized and existing under and
by virtue of the laws of the State of Ohio,
PLAINTIFF

v.

ROBERT G. PETERS, JR. and HELEN R. PETERS, his wife, and
UNITED STATES OF AMERICA, DEFENDANTS

DOCKET ENTRIES

1957

- Nov. 27. Bill of complaint filed; cause entered.
- Nov. 27. Summons issued ret. Ret. Jan. 26, '58.
- Dec. 18. Proof of service on summons filed, Dec. 5, '57.
- Dec. 18. Proof of service and return filed.
- Dec. 18. Proof of services by registered mail filed.

1958

- Jan. 29. Answer of defendant United States of America filed.
- Apr. 17. Affidavit of non-appearance filed.
- Apr. 17. Affidavit of regularity filed.
- Apr. 17. Order pro-confesso filed.
- [fol. 2]
- June 23. Praecipe for causes ready for trial 22545 C2.
- July 16. Stip. filed.

1959.

- Jan. 26. Stipulation filed.
- Feb. 10. Case submitted on briefs.
- Mar. 4. Taken under advisement.
- Mar. 31. Oral arguments heard; taken under advisement.
- Apr. 1. Plaintiff's Reply Brief filed.

1959

- Apr. 1. Brief on behalf of plaintiff; statement of facts filed.
- Apr. 1. Supplemental Stipulation filed.
- Apr. 1. Brief for the U.S.A. filed.
- Apr. 16. Decree filed.
- Apr. 22. Notice of entry of decree and proof of service thereof filed.
- May 6. Files enrolled.
- May 12. Claim of appeal, notice of taking appeal, and affidavit of service of claim of appeal and notice filed.
- May 12. Certificate of Court Reporter as to ordering of transcript filed.
- June 25. Motion for stay of proceedings, notice of hearing and proof of service filed.
- June 29. Tax costs plaintiff \$49.50.
- June 29. Order for dismissal of stay of proceeding sale of mortgaged premises and deposit of the proceeds therefrom filed.
- June 29. Stip. for dismissal of stay of proceedings—sale of mortgaged premises and disposal of the proceeds therefrom filed.
- [fol. 3]
- June 29. Stip. and order for dismissal of stay of proceedings, etc., granted.
- July 15. Order confirming report of sale filed.
- July 15. Commissioner's report of sale filed.
- July 23. Tax costs plaintiff filed.
- July 23. Proof of service of notice of entry of order confirming, sale filed.
- Sept. 18. Transcript of Court testimony filed.

**IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND, IN CHANCERY**

DECREE—Filed April 16, 1959

February 10, 1959

Beer, J.

This cause came on to be heard upon the bill of complaint filed herein and upon the answer of the United States of America filed herein, the said bill having been duly and regularly taken as confessed by the defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, for want of appearance after proper and regular service of a summons issued herein; and it appearing to the Court that all of the material allegation in plaintiff's bill of complaint are true and that the mortgage therein mentioned, bearing date the 10th day of November, 1954, constitutes a valid and subsisting lien upon the premises hereinafter described in favor of the plaintiff, prior and paramount to the rights of the defendants and each of them and superior to all tax liens filed or claimed by the defendant, United States of America, and it further appearing that there is due and owing to the plaintiff upon said mortgage and the promissory note secured thereby as of the 10th day of February, A. D. 1959, that being [fol. 4] the date of the hearing before this Court of this cause, the following sums, to-wit:

For Principal	\$15,634.16
For Interest	1,365.49
For fire insurance premiums paid by plaintiff.....	129.44
For Taxes advanced.....	1,475.71

making a total of eighteen thousand six hundred and four and 80/100 dollars (\$18,604.80) now due and unpaid on said mortgage, and it further appearing that plaintiff is the owner and holder of said promissory note and mortgage bearing date the 10th day of November, 1954, and as such owner is entitled to enforce and foreclose the same;

It is ordered, adjudged and decreed, and this Court, by virtue of the authority therein vested, doth order, adjudge and decree that the defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, shall pay to plaintiff or its attorneys the said sum of money so found as aforesaid to be due, including interest and costs, on or before ten (10) days from the date hereof, and that, in default thereof, the interest of said defendants, and each of them, in and to said premises hereinafter described, or so much thereof as may be sufficient to raise the amount due on said promissory note and mortgage, be sold at public auction by and under the direction of the Circuit Court Commissioner in and for said County of Oakland at any time after the expiration of the period herein limited for payment of the sums owing herein.

It is further ordered, adjudged and decreed that such sale be made within the County of Oakland and that the [fol. 5] said Circuit Court Commissioner conducting the same give notice of the time and place thereof in accordance with the rules and practice of this Court and the statute in such cases made and provided, and that any of the parties to this cause may become the purchaser or purchasers at such sale, and that the Circuit Court Commissioner execute the usual deed on foreclosure of a mortgage in Chancery to the purchaser or purchasers of the said mortgaged premises, on such sale; and that such sale and deed shall transfer and convey to the purchaser or purchasers all rights, title and interest of any and all of the parties to this cause in and to said mortgaged premises; and that the Commissioner, out of the proceeds of said sale, pay to plaintiff, or its attorneys, the total amount hereinbefore found to be due on said mortgage, with costs and interest, or so much thereof as the purchase money of said premises will pay for the same, and that the said Commissioner will take a receipt for the amount so paid, and file the same with his report; and that he bring the surplus monies arising from said sale, if any there be, into this Court without delay to abide the further order of this Court.

It is further ordered, adjudged and decreed that plaintiff may pay any taxes levied and assessed against said

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premises falling due hereafter and prior to the expiration of the period of redemption, and such portion of the premium or premiums of insurance covering any buildings located thereon as shall be required to keep the policy or policies in force until the expiration of the period of redemption, and any and all amounts so paid shall be added to the amount herein found to be due to plaintiff; provided that an affidavit or affidavits of such payment or payments be filed in the office of the Register of Deeds for said County of Oakland in accordance with [fol. 6] the statute in such case made and provided. Redemption from said sale in such case shall not be made except on payment of such additional sums.

It is further ordered, adjudged and decreed that six (6) months from and after the date of said sale, the said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, and all persons claiming by, through or under them, and that one (1) year from and after the date of said sale, the defendant United States of America and all persons now or who may hereafter claim by, through or under the said United States of America, be forever barred and foreclosed from all rights or equity of redemption and claim in and to said mortgaged premises and every part or parcel thereof which shall not prior to that time have been redeemed from said sale.

It is further ordered, adjudged and decreed that six (6) months after the date of said sale, the purchaser or purchasers of said mortgaged premises at said sale be let into possession thereof, and that any of the parties to said cause who may be in possession thereof, or any person who since the commencement of this suit has come into possession thereof, deliver possession of said premises, or such portions thereof as may not have been redeemed, to such purchaser or purchasers upon the production of the Commissioner's Deed for such premises and a certified copy of the order confirming the report of such sale, subject however to the right of the United States of America to redeem from said sale within one (1) year from the date of said sale.

It is further ordered, adjudged and decreed that if the monies arising from said sale shall be insufficient to pay the sums hereinbefore found to be due to plaintiff, to-

gether with such additional sums as may be added there-
[fol. 7] to in accordance with the provisions above set
forth, and interest, costs and expenses as aforesaid, that
said Commissioner shall specify the amount of such defi-
ciency in his report of sale, and that on the coming in
and confirmation of said report the said defendants, Rob-
ert G. Peters, Jr. and Helen R. Peters, who are hereby
declared to be personally liable for the debt secured by
said mortgage, pay to plaintiff the amount of such defi-
ciency, with interest thereon from the date of such report
and that said plaintiff have execution therefor.

The description and particular boundaries of the prop-
erty authorized to be sold under and by virtue of this
decree, as far as the same may be ascertained from said
mortgage on file herein, and as described in said bill of
complaint, are as follows:

Land situated in the City of Birmingham, County
of Oakland and State of Michigan, described as fol-
lows, to-wit:

"Lot 331, The Meyering Land Company's Birming-
ham Highlands Subdivision #2, a Subdivision of part
of Northwest $\frac{1}{4}$ Section 35, Town 2 North, Range 10
East, Village of Birmingham, Oakland County, Michi-
gan, according to the plat thereof as recorded in Liber
49, on page 5 of Plats, Oakland County Records."

/s/ William John Beer,
Circuit Judge.

[fol. 8] IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND, IN CHANCERY

STIPULATION—Filed January 26, 1959

The respective attorneys for the plaintiff and the defendant, United States of America, having agreed upon the existence of certain facts pertaining to the allegations contained in plaintiff's bill of complaint and the answer of the defendant United States of America, and the matters in controversy in said cause,

It is hereby stipulated and agreed by and between plaintiff and said defendant, United States of America and their respective attorneys, as follows:

1. That there is in plaintiff's possession a certain promissory note dated November 10, 1954, wherein and whereby the defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, agreed to pay to plaintiff, or order, the sum of \$17,000.00, with interest from date on any part thereof at any time unpaid, at the rate of 5% per annum, in monthly installments of principal and interest of \$112.20, and it was provided in said instrument that installments not paid when due should bear interest at the rate of 7% per annum after maturity and until paid; and that said instrument was signed by Robert G. Peters, Jr. and Helen R. Peters, his wife.

2. That there appears of record in the office of the Register of Deeds for said County of Oakland and State of Michigan, a certain mortgage from said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, to plaintiff, which is dated November 10, 1954 and recorded on the 24th day of November, A. D. 1954 in Liber 3240, page 186, Oakland County Records, which encumbers the following described premises:

[fol. 9] Land in the County of Oakland, State of Michigan, to-wit:

Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of the Northwest $\frac{1}{4}$ Section 35, Town 2, North, Range 10 East, Village of Birmingham, Oakland

County, Michigan, according to the plat thereof as recorded in Liber 49, on page 5 of Plats, Oakland County Records;

and that it was stated in said mortgage that the same was given to secure payment of the sum of \$17,000.00 with interest according to the terms of said promissory note and that the installments on said mortgage were payable as stipulated in said note.

3. That said mortgage contains a provision to the effect that the mortgagee may declare the entire unpaid balance owing on said mortgage due and payable forthwith in the event of a default on the part of the mortgagor in any of the provisions thereof; that certain payments have been made by the said Robert G. Peters, Jr. and Helen R. Peters, his wife, on said note and mortgage but plaintiff claims that there has been a default in payments as specified in the bill of complaint.

4. That on the date of the recording of said mortgage, Robert G. Peters, Jr. and Helen R. Peters, his wife, were the owners of record of the premises above described, as appears from the records in the office of the Register of Deeds for said County of Oakland.

5. That notices of Federal tax liens were filed against Robert G. Peters and Helen R. Peters and that the taxable period of said liens, the number, the principal balance, assessment date, and date of recording the notice of the liens are as follows:

[fol. 10]

Tax Period	Tax Lien Number	Principal Balance	Assessment Date	Recording Date of Lien
1952 Income	73505	\$1,368.07	1-11-54	DC 7-2-54
1953 Income	E-15	9,686.48	7-9-54	DC 8-2-55
1955 Income	P-1697	357.41	4-30-57	OC 7-12-57

Notices of tax liens Nos. 73505 and E-15 were filed with the Clerk of the United States District Court for the Eastern District of Michigan, Southern Division, and notice of tax lien No. P-1697 was recorded in the Office of the Register of Deeds for Oakland County, Michigan.

6. That none of said notices of Federal tax liens above mentioned contains a description of the premises encumbered by said mortgage.

7. That Frank G. Millard, Attorney General for the State of Michigan, issued an Attorney General's Opinion, dated September 10, 1953 and numbered 1709, in which it was stated that Treasury Department Form of Notice of Lien, No. 668, which was the Form used for Tax Lien No. 73505 above mentioned, was not entitled to recordation in the office of the Register of Deeds of any county in the State of Michigan for the reason that said Form did not provide for or allow for a description of any land, and did not comply with the provisions of Act 104 of the Public Acts of 1923 (Mich. Stat. Ann. 7.751); and that between the date of said opinion and August 11, 1956, the effective date of the Michigan Uniform Federal Tax Lien Registration Act, being Act 107 of the Public Acts of 1956, it was the policy of the office of the Register of Deeds for said County of Oakland not to accept for recording notices of Federal tax liens which did not contain a legal description of any land.

/s/ Clark, Klein, Brucker and Waples,
Attorneys for Plaintiff.

Dated: January 23, 1959.

Fred W. Kaess,
United States Attorney,

By /s/ Elmer L. Pfeifle, Jr.,
Assistant United States Attorney,
Attorneys for Defendant United
States of America.

Dated: January 22, 1959.

IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND, IN CHANCERY

SUPPLEMENTAL STIPULATION—Filed April 1, 1959

The respective attorneys for the plaintiff and defendant United States of America hereby stipulate and agree to the following supplemental items in addition to the stipulation heretofore entered into between the parties on or about January 23, 1959:

1. That the assessment list was received by the District Director of Internal Revenue at Detroit, Michigan on January 11, 1954, and that notice and demand for payment were sent to the taxpayers on January 13, 1954, in relation to the assessment for 1952 income.

2. That the assessment list was received by the District Director of Internal Revenue at Detroit, Michigan, on July 9, 1954, and that notice and demand for payment [fol. 12] were sent to the taxpayers on July 16, 1954, in relation to the assessment for 1953 income.

3. That on April 30, 1957, the District Director's office at Detroit, Michigan made the assessment for the 1955 income tax and that notice and demand were sent to the taxpayers on May 9, 1957.

4. That the mortgage from said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, to plaintiff, Union Central Life Insurance Company, which is dated November 10, 1954, and which has been recorded on the 24th day of November, 1954, in Liber 3240 at page 186, in the office of the Register of Deeds for the County of Oakland, has been duly and properly recorded, and, apart from the legal questions raised in this action relating to priority of liens between the United States of America and the plaintiff herein, is a valid and subsisting first lien upon said premises.

/s/ Clark, Klein, Brucker & Waples,
By: H. William Butler,

/s/ Fred W. Kaess,
United States Attorney,

By: Elmer L. Pfeifle, Jr.,
Assistant United States Attorney.

Dated: March 30, 1959.

[fol. 13] . [File endorsement omitted]

**IN THE SUPREME COURT OF THE
STATE OF MICHIGAN**

**Appeal from the Circuit Court for the County of Oakland,
In Chancery**

Honorable William John Beer, Circuit Judge

Circuit Court No. C-29640

Supreme Court No. 48,252

**THE UNION CENTRAL LIFE INSURANCE COMPANY, a
Corporation organized and existing under and
by virtue of the laws of the State of Ohio,
PLAINTIFF AND APPELLEE**

v.

UNITED STATES OF AMERICA, DEFENDANT AND APPELLANT

**APPENDIX TO THE BRIEF FOR THE UNION
CENTRAL LIFE INSURANCE COMPANY,
APPELLEE—Filed April 1, 1960**

• • • •

**[fol. 14] IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND, IN CHANCERY**

BILL OF COMPLAINT—Filed November 27, 1957

Now comes The Union Central Life Insurance Company, plaintiff in the above entitled cause, and respectfully shows unto the Court as follows:

(1) That it is a corporation organized and existing under the laws of the State of Ohio and is duly authorized to do business within the State of Michigan.

(2) That on or about the 10th day of November, A. D. 1954 said defendants Robert G. Peters, Jr. and Helen

R. Peters, his wife, borrowed of plaintiff the sum of \$17,000.00, and as evidence of said indebtedness made, executed and delivered unto plaintiff their certain promissory note in writing bearing date the said 10th day of November, A. D. 1954, wherein and whereby the said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, agreed to pay to plaintiff, or order, said sum of \$17,000.00 with interest from date on any part thereof at any time unpaid at the rate of five per centum (5%) per annum, in monthly installments of principal and interest as follows: \$112.20 on the 1st day of January, 1955 and a like amount on the first day of each month thereafter to and including the first day of November, 1974, with the balance of principal and interest on the first day of December, 1974; and that it was further provided in said promissory note that installments not paid when [fol. 15] due shall bear interest at the rate of seven per centum (7%) per annum after maturity and until paid, all of which will more fully and at large appear upon reference to a true copy of said note which is hereto annexed and marked "Exhibit A".

(3) That in order to secure payment of the sum mentioned in said promissory note, said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, made, executed and delivered to plaintiff a certain mortgage on land situated in the City of Birmingham, County of Oakland and State of Michigan, and described as follows, to-wit:

"Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of Northwest $\frac{1}{4}$ Section 35, Town 2 North, Range 10 East, Village of Birmingham, Oakland County, Michigan according to the plat thereof as recorded in Liber 49, on Page 5 of Plats, Oakland County Records;"

that said mortgage bears date the 10th day of November, A. D. 1954, was duly executed and acknowledged, and recorded in Liber 3240, Page 186, Oakland County Records, on the 24th day of November, A. D. 1954; and that said mortgage constitutes a valid and subsisting lien on said premises prior and paramount to the interests of all defendants herein named and all other persons.

(4) That in and by the terms of said mortgage said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, agreed to pay said note according to its tenor and effect.

(5) That it was further provided in paragraph "2" of said mortgage that the mortgagors covenant and agree with the mortgage, its successors and assigns, to pay [fol. 16] pay when due all taxes, assessments and changes of every character which then were or which thereafter might become liens on the real estate described in said mortgage, and that if not so paid the mortgagee might pay such taxes, liens, charges or assessments and that said mortgage should stand as security for the amount so paid, with interest.

(6) That in and by the term of paragraph "3" of said mortgage the said mortgagors covenanted and agreed to keep the buildings then or thereafter erected on said mortgaged premises insured to the satisfaction of the mortgagee and to deliver the policies and renewals thereof to the mortgagee with loss clause satisfactory to the mortgagee attached; and that in case of failure to keep said buildings so insured the mortgagee might effect such insurance:

(7) That it was further provided in paragraph "6" of said mortgage that in case the taxes, assessments, liens, charges, attorney's fees, costs, expenses and insurance premiums are paid by the mortgage as provided in said mortgage, the amount so paid may be collected from the mortgagors on demand, together with interest at seven percentum (7%) per annum from the time of payment, and that said mortgage should stand as security therefor.

(8) That said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, have made default in the terms of said promissory note and mortgage in that they have failed and neglected to pay that installment of principal and interest which became due and payable thereunder on the 1st day of August, A. D. 1957 and have failed and neglected to pay all subsequent installments which have [fol. 17] become due and payable under the terms of said promissory note and mortgage, and that no payments have since been received thereon by plaintiff from or on behalf of said defendants or any other person.

(9) That said defendants, Robert G. Peters, Jr. and Helen R. Peters, his wife, have also made default in the terms of said mortgage in that they have failed and neglected to pay the County tax for the year 1956 in the amount of \$494.18 and have also failed and neglected to pay the City of Birmingham tax in the sum of \$152.71, in accordance with the provisions of said mortgage, and that plaintiff, in order to protect its interest in said premises, has paid the same in the amounts of \$494.18 and \$152.71, respectively, making a total of \$646.89 paid by plaintiff as aforesaid.

(10) That plaintiff has frequently demanded payment of such sums as are past due on said promissory note and mortgage but that notwithstanding such demands said defendants Robert G. Peters, Jr. and Helen R. Peters have neglected and still neglect to pay the same.

(11) That it is further provided in said mortgage as follows:

"If the Mortgagors fail to pay said note or any note given in renewal or extension thereof, or as evidence of interest, when due, or if the Mortgagors fail to comply with any provision hereof, the whole debt shall thereupon be due and payable at the option of the Mortgagee without notice, and this mortgage foreclosed by judicial proceedings * * *";

and that plaintiff has elected and by the filing of this bill of complaint does elect to declare the entire balance on said note due and payable forthwith.

[fol. 18] (12) That there is now due and owing under the terms of said promissory note and mortgage for principal the sum of \$15,634.16, for interest the sum of \$304.11, and for taxes paid by plaintiff the sum of \$646.89, making a total sum of \$16,585.16 due and owing as of the date hereof.

(13) That subsequent to the date on which said mortgage was recorded in the office of the Register of Deeds for said County of Oakland notice of Federal tax liens were filed in the office of the District Clerk for the Eastern District of Michigan, Southern Division, against the said defendants Robert G. Peters, Jr. and Helen R. Peters, his wife, as follows:

Income Tax lien No. 73505 in the amount of \$2,091.80, dated June 24, 1954, and filed on July 2, 1955;

Income Tax lien No. E-15, in the amount of \$9,686.48, dated August 1, 1955, filed August 2, 1955;

Income Tax lien No. P-1697, in the amount of \$357.41, dated July 11, 1957 and filed July 12, 1957, and also filed in the Office of the Register of Deeds for said County of Oakland in Volume 4, Tax Liens, Letter P. File No. 300;

that said liens of defendant, United States of America, and each of them, if valid, are subsequent, subordinate and inferior to the lien of said mortgage and to the rights of plaintiff thereunder.

(14) That no suit or proceeding at law has been had or taken for the recovery of the debt secured by said promissory note and mortgage or any part thereof.

[fol. 19] (15) That the value of plaintiff's interest in or lien on said premises very greatly exceeds the sum of \$100.00.

For as much then as plaintiff is without an adequate remedy except in a court of equity, it therefore prays the aid of this Court:

(a) That said defendants, and each and all of them, may full, true, direct and perfect answer make to all and singular the premises.

(b) That said mortgage of plaintiff be decreed to be a valid and subsisting lien upon said premises prior and paramount to the rights of the said defendants, and each and all of them, and of all persons claiming or who may hereafter claim by, through or under them.

(c) That said defendants, or such of them as may be found liable therefor, be decreed to pay the plaintiff forthwith the amount which shall be found to be due to it under the terms of said promissory note and mortgage, with interest thereon.

(d) That in default thereof, all of said defendants hereto, and all persons claiming or who may hereafter claim by, through or under them, may be forever barred and foreclosed of and from all right and equity of redemption in and to said premises and every part thereof.

(e) That in default of such payment, such mortgaged premises, with the appurtenances, may be sold at public auction or vendue by the order and decree and under the direction of this Court, and the monies arising from such sale, so far as may be necessary, or so far as the same shall extend, be applied after the payment of the expenses of such sale and costs of this suit, toward satisfying the full amount of the monies found as aforesaid to be due to plaintiff and secured by said promissory [fol. 20] note and mortgage; and that the surplus, if any there be, be paid to the defendants in such manner and amounts as the Court may determine.

(f) That said defendants and all persons claiming or who may hereafter claim by, through or under them, or who may have come into possession of said mortgaged land or premises since the commencement of this suit, may yield and deliver up possession thereof to the purchaser at such sale on production of the deed or deeds executed by the Circuit Court Commissioner or some other person making the same pursuant to said sale as aforesaid and a certified copy of this order of this Court confirming the report of such sale after such sale shall have become absolute unless said premises shall have in the meantime been redeemed according to law.

(g) That said defendants or such of them as may be found liable for the indebtedness due on said promissory note and mortgage, pay to plaintiff any balance thereof that shall remain due to plaintiff in the event that the sale of said mortgaged premises shall fail to produce a sufficient sum to pay the whole of said mortgage debt and the costs of this suit.

(h) And for such other, further and different relief as may be agreeable to equity and good conscience.

The Union Central Life Insurance
Company,

By: /s/ E. R. Best,
Its Second Vice President,

And /s/ Marshall C. Hunt,
Its Assistant Secretary.

Dated: November 18, 1957.

[fol. 21] IN THE CIRCUIT COURT FOR
THE COUNTY OF OAKLAND, IN CHANCERY

EXHIBIT B

MORTGAGE

On this 10th day of November, 1954, Robert G. Peters, Jr., married and Helen R. Peters of Oakland County, Michigan, hereinafter called the Mortgagors, mortgage and warrant to The Union Central Life Insurance Company, an Ohio Corporation, hereinafter called the Mortgagee, whose residence and post-office address is Cincinnati, Ohio, the following described real estate in Oakland County, Michigan, to-wit:

Lot 331, The Meyering Land Company's Birmingham Highlands Subdivision #2, a Subdivision of part of Northwest $\frac{1}{4}$ Section 35, Town 2 North, Range 10 East, Village of Birmingham, Oakland county, Michigan, according to the plat thereof as recorded in Liber 49, on Page 5 of Plats, Oakland County Records;

together with rents and profits and all fixtures and personal property now or hereafter attached to or used in connection with the real estate, which fixtures and personal property shall be deemed to be and form a part of the real estate and covered by the lien hereof.

To secure the payment of a debt evidenced by a certain note representing the principal sum loaned \$17,000.00, Seventeen Thousand Dollars, with interest from date to maturity and with interest after maturity as stipulated therein, being of even date and executed concurrently herewith by Robert G. Peters, Jr. and Helen R. Peters, his [fol. 22] wife, drawn at Detroit, Michigan, and payable to the order of The Union Central Life Insurance Company, whose residence and post-office address is Cincinnati, Ohio, where said note is payable on the due dates, in installments or in partial payments prior to maturity, as stipulated therein; the final installment is due and payable on December 1, 1974.

This Mortgage shall secure any and all renewals or extensions of the whole or any part of said indebtedness, however evidenced, with interest at such lawful rate as may be agreed upon, and any such renewals or extensions or any change in the terms or rate of interest shall not impair in any manner the validity of or priority of this mortgage, nor release the Mortgagors from personal liability for the debt hereby secured.

The right is hereby given by the Mortgagors and reserved by the Mortgagee to make partial release or releases of the security hereunder, agreeable to the Mortgagee without notice to, or the consent, approval or agreement of other parties in interest, which partial release or releases shall not impair in any manner the validity of or priority of this mortgage on the security remaining, nor release the personal liability of the Mortgagors for the debt hereby secured.

The Mortgagors for themselves and for their heirs, executors, administrators and assigns, do hereby covenant and agree with the Mortgagee, its successors and assigns, as follows:

1—To pay the note hereby secured according to its tenor and effect and to keep and perform all covenants, conditions and stipulations herein.

2—To pay all taxes, assessments and charges of every character which are now or which hereafter may become [fol. 23] liens on the real estate herein described when due, also all taxes assessed in MICHIGAN against the Mortgagee on this mortgage, or the note or debt hereby secured, before the same become delinquent, provided the amount of such latter taxes, together with interest on the debt hereby secured, does not exceed the maximum permitted by law to be paid, but if it does, the excess is to be paid by the Mortgagee; to deliver to the Mortgagee receipts upon payment thereof, and if not so paid, the Mortgagee may pay such taxes, liens, charges and assessments and this mortgage shall stand as security for the amount so paid with interest.

3—To keep the buildings now on or hereafter erected on the real estate herein described insured at the option and to the satisfaction of the Mortgagee and to deliver

the policies and renewals thereof to the Mortgagee with loss clause satisfactory to the Mortgagee, attached. In case of failure to keep said buildings so insured the Mortgagee may effect such insurance. The Mortgagors hereby assign and transfer to the Mortgagee all right and interest in all policies of insurance carried or to be carried upon said buildings and authorize the Mortgagee to collect for, adjust or compromise any losses under any insurance policies on said buildings and after deducting costs of collection, make application of the proceeds: (a) as a credit upon said note, interest and/or repayment of any amount advanced under any of the covenants or agreements hereof, or (b) to the restoration of the improvements, or (c) to deliver same to the owner of said real estate.

4—To keep the real estate herein described and all buildings, fences and other improvements thereon in as good condition and repair as of this date, and to commit or permit no waste, and to keep within said improvements [fol. 24] all heating, lighting, refrigerating and all other fixtures and applies now in or that may hereafter be placed in said improvements.

5—To pay reasonable attorneys' fees and all costs and expenses of the Mortgagee in case of any litigation involving the real estate herein described or in case of foreclosure of this mortgage, or in presenting claim under any administration or other proceedings where proof of claim is required by law to be filed, or if the note hereby secured is placed in the hands of an attorney for collection and be collected without suit.

6—In case taxes, assessments, liens, charges, attorneys' fees, costs, expenses and insurance premiums are paid as herein provided by the Mortgagee, the amount so paid may be collected from the Mortgagors on demand, together with interest at seven percent per annum from the date of payment and this mortgage shall stand as security therefor.

7—No sale of the premises herein described, no forbearances on the part of the Mortgagee and no extension of the time for the payment of the debt hereby secured given by the Mortgagee shall operate to release, dis-

charge, modify or affect the original liability of the Mortgagors herein nor shall the lien of this mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise, of all or any part of the real estate, the Mortgagee is authorized and empowered to deal with such vendee or transferee with reference to said real estate or the debt hereby secured or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the Mortgagors and without in any way releasing or discharging any of the liabilities or undertakings hereunder or under the note hereby secured.

[fol. 25] 8—Should development for oil, gas or minerals on the real estate herein described at any time, in the opinion of the Mortgagee, render said real estate less desirable as security for the indebtedness hereby secured, then the Mortgagee shall have the right to declare said note and all indebtedness hereby secured due and payable without notice and the Mortgagee shall have the same rights hereunder for the collection of same as though said note had become due by default or maturity.

9—That the Mortgagors shall not be liable for the payment of any charges or interest provided in this mortgage that may be found could not be lawfully made under the law of the State of Michigan, it being fully agreed and understood that it is the intention of the Mortgagee that this mortgage shall in all respects conform to the laws of said State, and should any payments be made by the Mortgagors that are found to be contrary to the laws of said State, the Mortgagors shall be entitled to the return of all sums so paid and this mortgage shall not be affected thereby.

10—That if the Mortgagee now or hereafter becomes the owner or holder of a mortgage or mortgages other than this upon the real estate herein described, or any part thereof, failure to comply with any of the requirements or conditions of either of said mortgages, which failure would mature the indebtedness secured by it, shall mature, at the option of the Mortgagee, the indebtedness under all such mortgages.

11—In case the power of eminent domain is exercised and all or a part of the mortgaged property is taken or

damaged thereunder, then whatever money shall thereby become due the Mortgagors is hereby assigned to and shall be paid to the Mortgagee, who, after deducting its reasonable costs and expenses shall apply the same to [fol. 26] ward the payment and satisfaction of the indebtedness hereby secured in full or pro tanto. Any surplus of such money over and above the amount necessary to pay in full all indebtedness hereby secured shall be paid by the Mortgagee to the Mortgagor or any person or persons claiming by, through, or under the Mortgagor.

12—Failure of the Mortgagors to pay any tax or insurance premium on security shall constitute waste and entitle the Mortgagee to proceed for the appointment of a receiver as provided in Act 171 of the Public Acts of Michigan of 1937.

13—If the Mortgagors fail to pay said note or any note given in renewal or extension thereof, or as evidence of interest when due, or if the Mortgagors failed to comply with any provision hereof, the whole debt shall thereupon be due and payable at the option of the Mortgagee without notice, and this mortgage foreclosed by judicial proceedings or the Mortgagee sell the security at public auction pursuant to statute and to convey to the purchaser. The Mortgagee shall apply the purchase money to the debt together with the cost of sale and reasonable attorneys' fees and pay any surplus to the Mortgagors. In case of sale the Mortgagee may purchase.

14—Should the Mortgagors fulfill all provisions, conditions, covenants and agreements, this mortgage shall be void and be released by the Mortgagee at the cost and expense of the Mortgagors (and in case of failure of the Mortgagors to release this mortgage, all claims for statutory penalties or damages are hereby waived), otherwise to remain in full force and virtue.

The covenants, provisions and benefits hereto shall inure to and bind the respective heirs, executors, administrators, successors and assigns of the parties hereto. [fol. 27] Wherever used herein, the singular shall include the plural and the plural the singular. The use of any gender shall include all genders. The term "Mortgagee" shall include any payee of the indebtedness hereby secured or any transferee thereof.

In Testimony Whereof, the Mortgagors sign and seal
the day and year first written above.

/s/ Robert G. Peters, Jr. (Seal)

/s/ Helen R. Peters (Seal)

Signed, sealed and delivered
in presence of:

/s/ Edward J. Schanbeck

/s/ E. Marie Gemmill.

IN THE CIRCUIT COURT FOR THE
COUNTY OF OAKLAND, IN CHANCERY

EXCERPTS FROM TESTIMONY

.

BAGLIN, FRANCIS, called and sworn as a witness testified
as follows:

.

Q. What is your full name?

A. Francis Baglin.

Q. Where are you employed?

A. Union Central Life Insurance Company.

Q. In what capacity?

A. Correspondent representative.

.

Q. In your capacity as correspondent representative of
the Union Central Life Insurance Company, do you have
[fol. 28] occasion to search records in the county in which
the land is located?

A. I do.

Q. Did you do that in this case?

A. Yes, sir.

Q. Did it come to your attention there was any Federal
Tax Lien existing prior to the execution of this mortgage?

A. There was none.

Q. Did you have knowledge of an income tax lien re-
corded January 11, 1954?

A. I did not.

.

[fol. 29]

[fol. 30] IN THE SUPREME COURT OF
THE STATE OF MICHIGAN

48252

UNION CENTRAL LIFE INSURANCE COMPANY, PLAINTIFF

Clark, Klein, Brucker & Waples

VS.

ROBERT G. PETERS, ET AL., and UNITED STATES OF AMERICA
(APPELLANT), DEFENDANTS

Fred W. Kaess
Elmer L. Pfeifle Jr.

Appeal from Oakland in Chancery

DOCKET ENTRIES

1959

May 12 Proof of Claim of appeal filed.
Dec. 11 Notice of filing transcript Sept 18th filed.
" " Stipulation Filed. Appellant has to Jan 18 to
file brief and appendix

1960

Mar 15 Stipulation filed. Plaintiff has until April 1 to
file brief and appendix
Apr 7 Record on appeal filed.
" " Note of Argument filed.
June 7 Argued and Submitted.
Sept 16 Affirmed in part and reversed in part and re-
manded. No Costs.
Oct. 5 Record returned to Court below.

[fol. 31] IN THE SUPREME COURT OF
 THE STATE OF MICHIGAN

48252

UNION CENTRAL LIFE INSURANCE CO.

VS.

ROBERT G. PETERS, ET AL.

Present the Honorable

John R. Dethmers,
 Chief Justice;
Leland W. Carr,
Harry F. Kelly,
Talbot Smith,
Eugene F. Black,
George Edwards,
Thomas M. Kavanagh,
Theodore A. Souris,
 Associate Justices.

ARGUMENT AND SUBMISSION—June 7, 1960

This cause coming on to be heard is argued by Mr. Butler for the plaintiff and by Mr. Shuldinger for the defendants and is duly submitted.

• • • •

[fol. 32] IN THE SUPREME COURT OF
THE STATE OF MICHIGAN

THE UNION CENTRAL LIFE INSURANCE COMPANY, a
Corporation organized and existing under and
by virtue of the laws of the State of Ohio,
PLAINTIFF AND APPELLEE

v.

ROBERT G. PETERS, JR. and HELEN R. PETERS, his wife,
DEFENDANTS

and

UNITED STATES OF AMERICA, DEFENDANT and APPELLANT

OPINION—Filed September 16, 1960

BEFORE THE ENTIRE BENCH

BLACK, J.

The defendant United States appeals from a decree foreclosing a real estate mortgage, executed by defendants Peters as mortgagors in favor of plaintiff as mortgagee.* The decree grants supremacy of the lien of the mortgage, to extent of all sums due and to become due according to its tenor, over competing federal liens for income taxes Mr. and Mrs. Peters failed to pay for the tax periods 1952, 1953 and 1955.

[fol. 33] It is stipulated, "apart from the legal questions raised in this action relating to priority of liens," that plaintiff's said mortgage "is a valid and subsisting first lien" upon the mortgaged premises. It is stipulated also that 2 of the 3 liens claimed by the United States were recorded only in the office of the clerk of the proper United States District Court, and it is agreed further that the third of such liens (No. P-1697), which is based on 1955 income taxes owing by Mr. and Mrs. Peters, was not recorded in the register of deeds office until July 12, 1957. Shortly thereafter plaintiff paid, as was its self-

* The mortgage was duly recorded in the proper register of deeds office November 24, 1954.

protective right under the terms of the mortgage, unpaid local taxes previously levied against the mortgaged premises. The sum so paid by plaintiff was \$646.89.

Refer to §§ 6321, 6322 and 6323 of the revenue code of 1954 (title 26, USCA §§ 6321, 6322 and 6323). Thereunder these federal liens arose against "all property and rights to property" of the taxpayers. Said section 6323 provides that such lien "shall not be valid as against any mortgagee . . . until notice thereof has been filed . . . in the office designated by the law of the State or Territory in which the property subject to the lien is situated" When the events giving rise to this litigation occurred, it was provided by Michigan law (CL 1948, § 211.521) "That whenever the collector of internal revenue . . . , shall desire to acquire a lien in favor of the United States for any tax payable to the United States against any property, real or personal, within the State of Michigan . . . , he is hereby authorized to file a notice of lien, setting forth the name and the residence or business address of [fol. 34] such taxpayer, the nature and the amount of such assessment, and a description of the land upon which a lien is claimed, in the office of the register of deeds in and for the county or counties in Michigan in which such property subject to such lien is situated" None of the federal liens for unpaid income taxes owing by Mr. and Mrs. Peters were recorded, according to Michigan statute, excepting as previously noted.

Two questions are presented. Such questions, taken from the respective briefs, are as follows:

"1. Should a federal tax lien against Robert G. Peters and wife, which was not filed with the Register of Deeds of Oakland County in accordance with the requirements of the Michigan recording statute, be allowed to take priority over the mortgage executed by Robert G. Peters and wife to the Appellee?"

"2. Whether the federal tax liens are entitled to priority over payments made by the mortgagee for local taxes, as well as over payments for such taxes which the mortgagee might make in the future during the redemption period following foreclosure?"

First: For an affirmative answer to stated question 1 defendant United States relies particularly on United States v. Rasmuson, CCA 8, 253 F2d 944. For a negative answer to such question plaintiff relies principally on Youngblood v. United States, CCA 6, 141 F2d 912. Rasmuson and Youngblood were not reviewed by the Supreme Court and it is conceded, with respect to the specific question each court considered, that the Supreme Court has not spoken save only by opposing analogies counsel have pressed upon us. Having considered the briefs and arguments addressed to stated question 1, we accept Youngblood's reasoning and application of our statute as decisive. The question is therefore answered by adoption [fol. 35] of the following conclusion of the court of appeals of the sixth circuit (Youngblood, p 915 of report):

"United States v. Snyder, 149 U.S. 210, 13 S. Ct. 846, 37 L. Ed. 705, adds no force to the Government's contention for the reason that, while it was there held that the tax system of the United States is not subject to the recording laws of the states, the Acts of Congress since that decision have required recording of United States tax liens: first, in accordance with the law of the state where the property subject to lien is situated; and, later and presently, in the office in which the filing of notices is authorized by the state law. Upon obvious principles of comity, the Congress of the United States has provided for compliance by the Government with state recording laws. The notice of tax lien involved in this controversy does not so comply."

Second: This is the more difficult question. Much though we might agree with the plaintiff mortgagee that a decision to subordinate its mortgage-provided lien, for expenditures made and to be made for protection of its primary lien, is bound to impede if not demoralize the so-called mortgage business in Michigan, there appears no alternative than that of due application of what is known in authoritative federal decisions as the "test of choateness." In plain backyard words, the "test of choateness" as applied in cases as at bar means that a properly recorded business lien, or other lien created by operation

of local law and duly recorded (if record is required), will receive preference over a federal tax lien only to the extent of the fixed (yes, "choate") amount thereof as of due recordation of the competing federal lien. The legal nature of such test will be found in the recent opinion of the 4th circuit in *United States v. Bond*, — F2d — (handed down May 31, 1960 and cited to us since argument of this case). Since the whole ground has been so freshly and thoroughly covered in *Bond*, and since the federal [fol. 36] courts of appeal are usually better equipped than state courts to appraise and apply decisions of the Supreme Court, we abstain from quotation or discussion of the question and refer the reader to *Bond* for understanding of our ruling that stated question 2 must be answered by granting supremacy of duly recorded federal tax lien No. P-1697 over the mortgagee's lien for local taxes paid by it after July 12, 1957.

Our concern over this result is shared elsewhere, so much as to give impetus to recent effort of the American Bar Association to correct matters by proposed congressional act.* Nevertheless it is the duty of this State Court

* "The Federal Government possesses a powerful weapon for the collection of delinquent taxes, a sweeping lien which attaches to all property of the taxpayer, real, personal, or intangible, which he then owns or thereafter acquires. That lien has been a matter of increasingly grave concern to banks, in their capacities both as creditors and as debtors of persons who are or may become delinquent in their taxes. That concern is based principally on a series of Supreme Court decisions, most of them unenlightening *per curiam* reversals, which lay down the rule that no contractual or statutory lien can prevail over even a subsequently arising federal tax lien unless the non-federal lien meets a most exacting standard of 'choateness.' Regardless of state laws to the contrary, a private lien securing a contingent or unliquidated claim, or which attaches to a shifting mass of property, is regarded as 'inchoate' and is subordinated even to federal tax liens that did not exist when the private lienor extended credit on the faith of the debtor's property. The alarming trend of those decisions moved the American Bar Association to appoint a special Committee on Federal Liens, whose legislative recommendations were approved by the Association on February 23, 1959." ("Federal Tax Liens: Effects of the American Bar Association Proposals on Banks and Secured Lenders"; *The Banking Law Journal*, Vol 76, No 5, May, 1959, pp 369, 370).

to follow current decisions of the Supreme Court upon decisive federal questions. This is such a question, since its present solution—shown in *Bond*—determines the extent to which Congress has consented that federal tax liens may be subordinated to business or statutory liens. And we have no right to look into the “womb of time” or the “seeds of time” to anticipate a possible doctrine of modification (See *Scholle v. Secretary of State*, 360 Mich 1, 114). If a state court were possessed of such right, it is likely that a portent of re-examination might be found in the newest decisions of the Supreme Court (See *United States v. Brosnan*, June 13, 1960, and *Aquilino v. United States* and *United States v. Durham Lumber Co.*; handed down June 20, 1960). In *Aquilino* and *Durham* the Supreme Court hints circumstantially that it may be ready to qualify the mentioned test of “choateness.” The hint, however, is neither loud nor clear; hence it is our plain duty to follow the supreme rule *Bond* expounds from *United States v. Security Trust & Sav.*, 340 US 47; *United States v. New Britain*, 347 US 81; *United States v. Aciri*, 348 US 211; *United States v. Liverpool & L. & G. Ins. Co.*, 348 US 215; *United States v. Scovil*, 348 US 218, and *United States v. Ball Constr. Co.*, 355 US 587.

Affirmed in part and reversed in part, and remanded for entry of decree in accordance with the respective answers we have given to the stated questions. No costs.

Signed: Eugene F. Black,
 Harry F. Kelly,
 John R. Dethmers,
 Leland W. Carr,
 Talbot Smith,
 George Edwards,
 Theodore Souris,
 Thomas M. Kavanagh

[File endorsement omitted]

[fol. 38] IN THE SUPREME COURT OF
THE STATE OF MICHIGAN

• • • •

48252

THE UNION CENTRAL LIFE INSURANCE COMPANY, PLAINTIFF

VS.

ROBERT G. PETERS, ET AL., and UNITED STATES OF AMERICA
(APPELLANT), DEFENDANTS

Present the Honorable

John R. Dethmers,
Chief Justice,

Leland W. Carr,

Harry F. Kelly,

Talbot Smith,

Eugene F. Black,

George Edwards,

Thomas M. Kavanagh,

Theodore A. Souris,

Associate Justices.

JUDGMENT—September 16, 1960

This cause having been brought to this Court by appeal from the Circuit Court for the County of Oakland, in Chancery, and having been argued by counsel, and due deliberation had thereon, it is now ordered, adjudged and decreed by the Court, that the decree of the Circuit Court for the County of Oakland, in Chancery be and the same is hereby AFFIRMED in part and reversed in part and remanded to the court below for the entry of a decree in accordance with the opinion filed herein. And it is further ordered, adjudged and decreed that no costs be awarded herein.

[fol. 39] Clerk's Certificate to foregoing
transcript omitted in printing

[fol. 40] SUPREME COURT OF THE
UNITED STATES

No., October Term, 1960

UNITED STATES, PETITIONER

v.

UNION CENTRAL LIFE INSURANCE CO., ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR
WRIT OF CERTIORARI—December 7, 1960

UPON CONSIDERATION of the application of counsel for
petitioner,

It Is ORDERED that the time for filing petition for writ
of certiorari in the above-entitled cause be, and the same
is hereby, extended to and including

February 13, 1961

/s/ Potter Stewart

*Associate Justice of the Supreme
Court of the United States.*

Dated this 7th day of December, 1960.

[fol. 41] **SUPREME COURT OF THE
UNITED STATES**

No. 722, October Term, 1960

UNITED STATES, PETITIONER.

VS.

UNION CENTRAL LIFE INSURANCE COMPANY

ORDER ALLOWING CERTIORARI—March 27, 1961

The petition herein for a writ of certiorari to the Supreme Court of the State of Michigan is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.